

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS-----X  
J.R.S.

Plaintiff,

SUMMONS

-against-

INDEX No.:

HOLY FAMILY DIOCESAN HIGH SCHOOL,  
NOW KNOWN AS, ST. ANTHONY'S HIGH  
SCHOOL, THE ROMAN CATHOLIC DIOCESE OF  
ROCKVILLE CENTRE,  
CONGREGATION OF THE RELIGIOUS  
BROTHERS OF THE THIRD ORDER REGULAR  
OF ST. FRANCIS, A/K/A THE FRANCISCAN  
BROTHERS OF BROOKLYN, THE FRANCISCAN  
BROTHERS GENERALATE, FRANCISCAN  
BROTHERS INC., THOMAS MURTAUGH,

Defendants.  
-----X

Plaintiff designates the County of KINGS as the place of trial. The basis of venue is one of the Defendants residence is located in KINGS COUNTY.

**TO THE ABOVE NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by defaulted for the relief demanded in the complaint.

Dated: New York, New York  
November 12, 2019

**PHILLIPS & PAOLICELLI, LLP**  
*Attorneys for Plaintiff*

By: \_\_\_\_\_

Daniel J. Woodard, Esq.  
747 Third Avenue, 6<sup>th</sup> Fl.  
New York, NY 10017

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(212) 388-5100

To:

HOLY FAMILY DIOCESAN HIGH SCHOOL, NOW KNOWN AS, ST. ANTHONY'S HIGH  
SCHOOL  
275 Wolf Hill Road  
South Huntington, NY

THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE  
50 North Park Avenue  
Rockville Centre, New York

CONGREGATION OF THE RELIGIOUS BROTHERS OF THE THIRD ORDER REGULAR  
OF ST. FRANCIS, A/K/A THE FRANCISCAN BROTHERS OF BROOKLYN  
133 Remsen Street  
Brooklyn, New York

THE FRANCISCAN BROTHERS GENERALATE  
133 Remsen Street  
Brooklyn, New York

FRANCISCAN BROTHERS INC.,  
133 Remsen Street  
Brooklyn, NY

THOMAS MURTAUGH  
860 VIRGINIA ST APT 108  
DUNEDIN, FL 34698-6749

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**-----X  
J.R.S.-against-  
Plaintiff,**COMPLAINT**

INDEX No.:

HOLY FAMILY DIOCESAN HIGH SCHOOL,  
NOW KNOWN AS, ST. ANTHONY'S HIGH  
SCHOOL, THE ROMAN CATHOLIC DIOCESE OF  
ROCKVILLE CENTRE,  
CONGREGATION OF THE RELIGIOUS  
BROTHERS OF THE THIRD ORDER REGULAR  
OF ST. FRANCIS, A/K/A THE FRANCISCAN  
BROTHERS OF BROOKLYN, THE FRANCISCAN  
BROTHERS GENERALATE, FRANCISCAN  
BROTHERS INC., THOMAS MURTAUGH,

Defendants.  
-----X

Plaintiff J.R.S. by and through his undersigned attorneys, as and for their Complaint,  
alleges as follows:

**NATURE OF THE ACTION**

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.  
Plaintiff J.R.S. who was a student at Defendant HOLY FAMILY DIOCESAN HIGH SCHOOL,  
NOW KNOWN AS, ST. ANTHONY'S HIGH SCHOOL, was repeatedly sexually abused and  
assaulted by Defendant THOMAS MURTAUGH ("MURTAUGH"), an employee of Defendants  
HOLY FAMILY DIOCESAN HIGH SCHOOL, NOW KNOWN AS, ST. ANTHONY'S HIGH  
SCHOOL, THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE,  
CONGREGATION OF THE RELIGIOUS BROTHERS OF THE THIRD ORDER REGULAR

OF ST. FRANCIS, A/K/A THE FRANCISCAN BROTHERS OF BROOKLYN, THE FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC.

2. Plaintiff J.R.S., was approximately 14 - 15 years old when the sexual abuse first began, in or about 1972-1973.

3. Defendants HOLY FAMILY DIOCESAN HIGH SCHOOL, NOW KNOWN AS, ST. ANTHONY'S HIGH SCHOOL, THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, CONGREGATION OF THE RELIGIOUS BROTHERS OF THE THIRD ORDER REGULAR OF ST. FRANCIS, A/K/A THE FRANCISCAN BROTHERS OF BROOKLYN, THE FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., held MURTAUGH out as a religious education teacher and tennis coach of the school tennis team, and MURTAUGH'S abuse of Plaintiff J.R.S. occurred while he was acting in his assigned role of as teacher and school tennis coach.

4. MURTAUGH'S sexual abuse of Plaintiff J.R.S. took place on the premises of HOLY FAMILY DIOCESAN HIGH SCHOOL, NOW KNOWN AS, ST. ANTHONY'S HIGH SCHOOL, including in the locker room of the school and elsewhere. The sexual abuse, which was extreme, took place over several years.

5. Not only did Defendants HOLY NAME DIOCESAN HIGH SCHOOL, NOW KNOWN AS, ST. ANTHONY'S HIGH SCHOOL, THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, CONGREGATION OF THE RELIGIOUS BROTHERS OF THE THIRD ORDER REGULAR OF ST. FRANCIS, A/K/A THE FRANCISCAN BROTHERS OF BROOKLYN, THE FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., place Plaintiff in harm's way by improperly holding MURTAUGH out as a teacher and tennis coach and permitting him to have unfettered access to Plaintiff J.R.S. in that

role, but they carelessly, negligently, and recklessly, failed to protect Plaintiff J.R.S. from sexual abuse by MURTAUGH, permitted the abuse to occur, failed to supervise MURTAUGH, failed to timely investigate MURTAUGH'S misconduct, acted to protect their own self-interest to the detriment of innocent children, including Plaintiff, and are otherwise responsible for MURTAUGH'S sexual assault of Plaintiff and Plaintiff's consequential injuries and damages.

### **PARTIES**

6. Plaintiff is an individual currently residing in Suffolk County, New York.

7. Plaintiff was born in 1958.

8. Defendant HOLY FAMILY DIOCESAN HIGH SCHOOOL, NOW KNOWN AS, ST. ANTHONY'S HIGH SCHOOL is a Roman Catholic High School with its principal office at 275 Wolf Hill Rd, Melville/South Huntington, New York 11747 within the Diocese of Rockville Centre ("ST. ANTHONY'S") and at all relevant times was, a non-profit organization or entity, which includes, but is not limited to, civil corporations, decision-making entities, officials, and employees, authorized to conduct business and doing business at 275 Wolf Hill Rd, Melville/South Huntington, New York 11747.

9. At all relevant times, ST. ANTHONY'S was owned, operated, maintained and managed by Defendants, the ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, CONGREGATION OF THE RELIGIOUS BROTHERS OF THE THIRD ORDER REGULAR OF ST. FRANCIS, A/K/A THE FRANCISCAN BROTHERS OF BROOKLYN, THE FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC.

10. At all relevant times, Defendant the ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE is a religious corporation organized pursuant to Religious Corporation Law, with its principal office at 50 North Park Avenue in Rockville Centre, New York. The

Diocese of Rockville Centre is a Roman Catholic Diocese. At all relevant times, the ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE owned, created, oversaw, managed, supervised, controlled, directed and/or operated various institutions of the Diocese of Rockville Centre, including Defendant ST. ANTHONY'S and oversaw, managed, supervised, controlled direct all staff who worked at said school.

11. At all relevant times, Defendant the CONGREGATION OF THE RELIGIOUS BROTHERS OF THE THIRD ORDER REGULAR OF ST. FRANCIS A/K/A THE FRANCISCAN BROTHERS OF BROOKLYN ("FRANCISCAN BROTHERS OF BROOKLYN") is and was a religious order of the Roman Catholic Church with its principal office located at 133 Remsen Street, Brooklyn, Kings County, New York. At all relevant times, FRANCISCAN BROTHERS OF BROOKLYN created, owned, oversaw, managed, supervised, controlled, directed and/or operated various institutions including Defendant ST. ANTHONY'S and oversaw, managed, supervised, controlled direct all staff who worked at said school, including but not limited to, Defendant MURTAUGH.

12. At all relevant times Defendant THE FRANCISCAN BROTHERS GENERALATE ("FRANCISCAN BROTHERS GENERALATE") is and was a not for profit corporation with its principal office at 133 Remsen Street, in Brooklyn, Kings County, New York. At all relevant times FRANCISCAN BROTHERS GENERALATE created, owned, oversaw, managed, supervised, controlled, directed and/or operated various institutions including Defendant ST. ANTHONY'S and oversaw, managed, supervised, controlled direct all staff who worked at said school including but not limited to, Defendant MURTAUGH.

13. At all relevant times Defendant FRANCISCAN BROTHERS INC., is and was a not for profit corporation with its principal office at 133 Remsen Street, in Brooklyn, Kings County, New York. At all relevant times FRANCISCAN BROTHERS GENERALATE created, owned, oversaw, managed, supervised, controlled, directed and/or operated various institutions including Defendant ST. ANTHONY'S and oversaw, managed, supervised, controlled direct all staff who worked at said school, including but not limited to, Defendant MURTAUGH.

14. At all relevant times, Defendants ST. ANTHONY'S, the ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., owned the premises upon which ST. ANTHONY'S was operated and all premises where ST. ANTHONY'S was located.

#### FACTUAL ALLEGATIONS

15. Plaintiff repeats and re-alleges all preceding paragraphs of this Complaint.

16. From approximately 1972 through 1976 Plaintiff attended and was an enrolled student at Defendant HOLY FAMILY DIOCESAN HIGH SCHOOL which is now known as Defendant ST. ANTHONY'S HIGH SCHOOL.

17. At all relevant times, Defendant MURTAUGH was under the direct supervision, employ and control of the Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC.

18. At all relevant times, Defendant MURTAUGH was assigned by Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and

FRANCISCAN BROTHERS INC., to work at, teach and coach students at Defendant ST. ANTHONY'S.

19. At all relevant times, Defendant MURTAUGH'S duties and responsibilities included teaching, including providing religious education and coaching various school sports teams to students at Defendant ST. ANTHONY'S.

20. At all relevant times Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., held MURTAUGH out as a qualified educator, teacher and coach for students.

21. Beginning in or about 1972-1973, when Plaintiff was in 9<sup>th</sup> grade, Defendant MURTAUGH, acting in the course and scope of his employment with Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., was assigned to teach Plaintiff and to coach Plaintiff at ST. ANTHONY'S.

22. At all relevant times, Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., authorized permitted and assigned MURTAUGH to teach Plaintiff and to coach him on a school sports team.

23. At all relevant times, specifically during the period of 1972-1976, while Plaintiff was an enrolled student at Defendant ST. ANTHONY'S, Defendant MURTAUGH on the premises of Defendant ST. ANTHONY'S, including but not limited to, in the locker room of the



gym of Defendant ST. ANTHONY'S and elsewhere, on numerous occasions, engaged in unpermitted, forcible, and harmful, sexual assault, sexual abuse and/or sexual contact with Plaintiff.

24. Dozens of times when Plaintiff was approximately 14-16 years old, in or around approximately 1973 through 1976 Defendant MURTAUGH used his position at Defendant ST. ANTHONY'S to sexually assault, sexually abuse and/or have sexual contact with the Plaintiff in violation of the laws of the State of New York.

25. The sexual abuse, sexual assault and/or sexual contact of Plaintiff by Defendant MURTAUGH from 1973 through 1976 occurred on Defendants property in violation of the laws of the State of New York.

26. Defendant MURTAUGH continued to coerce, threaten and bribe Plaintiff with gifts, money, food and events forcing Plaintiff to acquiesce in his continued sexual misconduct, and to not report him to anyone and by threatening to do harm to him, his family if he did.

27. Plaintiff's relationship to Defendants as a vulnerable child and student, put pressure on Plaintiff not to report MURTAUGH'S abuse.

28. At all relevant times Defendant MURTAUGH was under the management, supervision, employ, direction and/or control of Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC.

29. At all relevant times, his positions at, within, or for Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and

FRANCISCAN BROTHERS INC., Defendant MURTAUGH was put in direct contact with Plaintiff.

30. At all relevant times, Defendant MURTAUGH used his position at, within, or for, Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., and the implicit representations made by them about his character that accompanied that position to gain Plaintiff's trust and confidence and to create opportunities to be alone with and touch and assault Plaintiff.

31. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up the inappropriate and unlawful sexual activities of Defendant MURTAUGH who sexually abused Plaintiff.

32. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., had the responsibility to manage, supervise, control and/or direct Defendant MURTAUGH who was a teacher and coach at ST. ANTHONY'S and had a duty not to aid pedophiles such as Defendant MURTAUGH by assigning, maintaining and/or appointing them to positions with access to minors.

33. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., had a duty to the Plaintiff to ensure that Defendants did not offer opportunities for pedophiles to approach and assault

vulnerable minors. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., knew and/or should have known that Defendant MURTAUGH used his position at ST. ANTHONY'S to harm minors, including Plaintiff and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.

34. Defendants knew or should have known that MURTAUGH was a danger to minors, like Plaintiff, before he sexually abused Plaintiff.

35. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC knew or should have known that allowing MURTAUGH, to have unsupervised and unlimited access with students, particularly vulnerable students like Plaintiff, posed an unacceptable risk of child sex abuse.

36. Prior to the time of Plaintiff's abuse by MURTAUGH, Defendants knew or should have known that there was a specific danger of child sex abuse for children in their institutions and programs.

37. The sexual abuse of Plaintiff by MURTAUGH was foreseeable.

38. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to ST. ANTHONY'S HIGH SCHOOL formerly known as HOLY FAMILY DIOCESEAN HIGH SCHOOL; they undertook custody of minor children, including Plaintiff;

they promoted their facilities and programs as being safe for children, they held out their agents, including MURTAUGH, as safe to work with and around minor students, they encouraged parents and children to spend time with their agents; and/or authorized their agents, including MURTAUGH, to provide professional services to children.

39. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., owed Plaintiff a heightened, fiduciary and non-delegable duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect himself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

40. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

41. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, physical manifestations of emotional distress, psychological injuries, fear and anxiety; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and will continue to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses for medical and psychological treatment, and was otherwise damaged in an amount that exceeds the jurisdictional limits of lower courts in this State.

42. To the extent that any Defendant pleads, or otherwise seeks to rely upon Article 16 of the New York Civil Practice Law and Rules (CPLR) to have fault apportioned to another allegedly culpable party, Plaintiff expressly states that Defendants' conduct falls within one or more of the subdivisions of CPLR specifically CPLR 1602(2) (iv) in that Defendants' liability herein arises by reason of a non-delegable duty or by reason of the doctrine of *respondeat superior*, and CPLR 1602(7) in that defendants herein acted with reckless disregard for the safety of others.

43. Pursuant to the Child Victims Act, a notice of claim is not a prerequisite to the filing of this action.

### **FIRST CAUSE OF ACTION**

#### **NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION**

44. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

45. At all relevant times Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of MURTAUGH, so as to protect minor children, including Plaintiff, who were likely to come into contact with him, and/or under his influence or supervision, and to ensure that MURTAUGH did not use his assigned position to injure minors by sexual assault, contact or abuse.

46. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., were negligent and failed

to use reasonable care in hiring, appointing, assigning, and retention, of MURTAUGH, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned him to Defendants' high school, when Defendants knew or should have known of facts that would make him a danger to children; and Defendants were otherwise negligent.

47. Defendants were negligent and did not use reasonable care in their supervision and direction of MURTAUGH, failed to monitor his activities, failed to oversee the manner in which he carried out the duties to which Defendants assigned them, even though they knew or should have known that MURTAUGH posed a threat of sexual abuse to minors; allowed the misconduct described above to occur and continue; failed to investigate MURTAUGH'S dangerous activities and remove him from their premises; failed to have policies and practices in place that would have prevented this abuse; and Defendants were otherwise negligent.

48. MURTAUGH would not have been in a position to sexually abuse Plaintiff had Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., not been negligent in the hiring, retention, supervision, and direction of MURTAUGH

49. At all relevant times, MURTAUGH acted in the course and scope of his employment with Defendants.

50. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

51. As a direct and proximate result of the aforesaid misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury as described above.

52. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

### **SECOND CAUSE OF ACTION**

#### **NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT**

53. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

54. At all relevant times, Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., affirmatively and/or impliedly represented to minor children, their families and the general public that employees and agents working in ST. ANTHONY'S, including MURTAUGH, did not pose a risk of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

55. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., knew or should have known this representation was false and that employing MURTAUGH and giving him unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

56. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN

BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice for making hiring and assignment decisions, so as to protect vulnerable students in their care from sexual abuse.

57. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice to monitor, supervise or oversee MURTAUGH'S interactions with minor students such as Plaintiff, in order to keep them safe from sexual abuse.

58. The careless, negligent and reckless misconduct by Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., as described herein was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury and damages as described above.

59. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

### **THIRD CAUSE OF ACTION**

### **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**



60. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

61. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

62. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff's safety and caused him to fear for his own safety.

63. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., knew or disregarded the substantial probability that MURTAUGH would cause severe emotional distress to Plaintiff.

64. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

65. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

#### **FOURTH CAUSE OF ACTION**

##### **PREMISES LIABILITY**

66. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

67. At all relevant times, Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., owned, operated, and/or controlled the premises known as HOLY FAMILY DIOCESAN HIGH SCHOOL, NOW KNOWN AS, ST. ANTHONY'S HIGH SCHOOL, including the areas where the sexual abuse of Plaintiff occurred.

68. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

69. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by students, like Plaintiff, whose presence was reasonably anticipated.

70. Defendants A ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., willfully, recklessly, and negligently failed to provide a reasonably safe premises that was free from the presence of sexual predators and/or the assault by the occupants of the premises, including Defendant MURTAUGH. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., thereby breached their duty of care of Plaintiff.

71. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury and damages as described above.

72. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

### **FIFTH CAUSE OF ACTION**

#### **BREACH OF FIDUCIARY NON-DELEGABLE DUTY**

73. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

74. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC. The entrustment of Plaintiff to the care and supervision of the Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., while Plaintiff was a vulnerable child, imposed upon these Defendants a fiduciary non-delegable duty to act in the best interests of Plaintiff.

75. Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

76. By reason of the foregoing, Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., breached their fiduciary duties to Plaintiff.

77. As a direct and proximate result of Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC.'s foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

78. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

#### **SIXTH CAUSE OF ACTION**

#### **BREACH OF DUTY *IN LOCO PARENTIS***

79. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

80. At all relevant times, Plaintiff was a vulnerable child entrusted to the care of Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., and was under the supervision and control of these Defendants, such that these Defendants owed him a duty to act *in loco parentis* and to prevent foreseeable injuries.

81. By reason of the foregoing, Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC., breached their duties to act *in loco parentis*.

82. As a direct and proximate result of Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS INC's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

83. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

#### **SEVENTH CAUSE OF ACTION**

##### **BREACH OF STATUTORY DUTIES TO REPORT**

84. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

85. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

86. Defendants breached their statutory duty by failing to report reasonable suspicion of sexual abuse by MURTAUGH.

87. As a direct and proximate result of Defendants ST. ANTHONY'S, ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, FRANCISCAN BROTHERS OF BROOKLYN, FRANCISCAN BROTHERS GENERALATE and FRANCISCAN BROTHERS

INC's foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

88. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

### **EIGHTH CAUSE OF ACTION**

#### **BATTERY**

89. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

90. Defendant MURTAUGH, with intent to do so, engaged in sexual and unlawful acts with Plaintiff which amounted to a series of harmful and offensive contacts to Plaintiff's person.

91. At all relevant times, Plaintiff was a minor and did not consent to these sexual and unlawful acts.

92. As a direct and proximate result of Defendant MURTAUGH'S sexual and unlawful acts, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

93. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

### **NINTH CAUSE OF ACTION**

#### **ASSAULT**

94. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

95. Defendant MURTAUGH, with intent to do so, engaged in sexual and unlawful acts with Plaintiff, which created a reasonable apprehension in Plaintiff of immediate harmful or offensive contact to Plaintiff's person.

96. At all relevant times, Plaintiff was a minor and did not consent to these sexual and unlawful acts.

97. As a direct and proximate result of Defendant MURTAUGH'S sexual and unlawful acts, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

98. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

#### **TENTH CAUSE OF ACTION**

##### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

99. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

100. Defendant MURTAUGH engaged in sexual and unlawful acts with Plaintiff with intent to cause, or with reckless disregard for the probability of causing, Plaintiff to suffer severe emotional distress.

101. Defendant MURTAUGH'S conduct was both extreme and outrageous in character, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

102. Defendant MURTAUGH committed these sexual and unlawful acts maliciously, fraudulently, and oppressively with the wrongful intention of injuring Plaintiff and in disregard to Plaintiff's rights.

103. As a direct and proximate result of Defendant MURTAUGH'S conduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

104. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

**WHEREFORE**, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for his injuries, in an amount to be determined at trial in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs;
- b. Awarding Plaintiff punitive damages for his injuries, in an amount to be determined at trial in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;
- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.




**JURY TRIAL DEMANDED**

Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: November 12, 2019

Yours, etc.

**PHILLIPS & PAOLICELLI, LLP**

  
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